

**THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
SUPERIOR COURT**

Merrimack Superior Court
163 North Main St./PO Box 2880
Concord NH 03302-2880

Telephone: (603) 225-5501
TTY/TDD Relay: (800) 735-2964
<http://www.courts.state.nh.us>

NOTICE OF DECISION

**CHRISTOPHER M. CANDON, ESQ
SHEEHAN PHINNEY BASS & GREEN PA
1000 ELM ST
PO BOX 3701
MANCHESTER NH 03105-3701**

FEB 28 2013

Case Name: **In the Matter of the Liquidation of Noble Trust Company**
Case Number: **217-2008-EQ-00053**

Please be advised that on February 26, 2013 Judge Smukler made the following order relative to:

Liquidator's Submission of Proposed Order "The proposed order has been approved and signed. So Ordered".

(Proposed) Order Granting Joint Motion for Approval of Settlement Agreement with Director and Officer Parties "So Ordered" (copy attached).

Liquidator's Assented-to Motion to Substitute Exhibits to Motion to Approve Settlement and Release Agreement with PHL Variable Insurance Company "Request to substitute exhibits is Granted".

February 27, 2013

William S. McGraw
Clerk of Court

(484)

C: Steven A Solomon, ESQ; Russell F Hilliard, ESQ; Thomas Hetherington, ESQ; Gordon J MacDonald, ESQ; John M Sullivan, ESQ; Noble Trust Company; Bruce A Harwood, ESQ; Peter C.L. Roth, ESQ; Byrne J. Decker, ESQ; Michele E. Kenney, ESQ; Jonathan P. Pavlovcak, ESQ; William S. Gannon, ESQ; J. Christopher Marshall, ESQ; Bertrand A. Zalinsky, ESQ; Benjamin E. Marcus, ESQ; Keriann Roman, ESQ; David D. Cowan

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

Docket No. 08-E-0053

**In the Matter of the Liquidation of
Noble Trust Company**

**ORDER GRANTING JOINT MOTION FOR APPROVAL OF
SETTLEMENT AGREEMENT WITH DIRECTOR AND OFFICER PARTIES**

Upon consideration of the Joint Motion for Approval of Settlement Agreement with Director and Officer Parties dated January 17, 2013 (the "Motion"), pursuant to which the Liquidator of Noble Trust Company (the "Liquidator" and "Noble Trust," respectively),¹ and Eve Prachar Lindsey, Lisa Elliot (f/k/a Lisa Ordway), Medray Carpenter, George Owens, The Estate of George Owens, Chris Norwood, Thomas R. Anderson, Agtax, Inc., Kerry T. Piandes, Kenneth J. Bojarski, Spencer Johnson, Anastasia Coravos, Global Financial Investors & Insurance Brokerage, Inc. (f/k/a Global Financial, Inc.), and Michael J. Walsh d/b/a Walsh & Co. (the "Settling Defendants"), seek approval of their Settlement Agreement (the "Settlement Agreement"); due written notice of the Motion, the hearing on the Motion and the deadline for filing objections thereto having been given and served upon all creditors and other interested persons entitled thereto in the manner specified by the procedures approved by this Court; the Court having reviewed the Motion and having reviewed the Settlement Agreement under seal in accordance with this Court's Order Establishing Settlement Agreement Review Procedures dated December 5, 2012; there being no objections made to the relief

¹ At the time of the filing of the Motion and execution of the Settlement Agreement, Ronald A. Wilbur was the Liquidator of Noble Trust. On February 1, 2013, Glenn A. Perlow was appointed by order of this Court the successor Liquidator of Noble Trust.

requested; a hearing having been held on February 22, 2013; and having found that approval of the Settlement Agreement is an appropriate and prudent exercise of the Liquidator's judgment, and is in the best interests of this estate and its creditors; and, after due deliberation and sufficient cause appearing therefor and for the reasons stated on the record at the hearing and with the consent of the Settling Defendants set forth on the record at the hearing but subject to the right of the Paying Settling Defendants (as defined below) to file, prior to March 13, 2013, a motion to stay the Effective Date and have the non-paying settling defendant (the "Non-Paying Settling Defendant") show cause as to why his share of the settlement funds has not been paid; it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is granted, and the Settlement Agreement is approved *nisi* with the conditions to the effectiveness of this Order set forth in Section 9 below.
2. In compliance with the procedures approved by this Court, the Liquidator has provided adequate notice to creditors and other interested persons of the hearing on the Motion, the issues to be decided at the hearing, and the deadline for filing objections.
3. Court Approval² shall be deemed to occur on the date that this order shall have become non-appealable or, in the event of an appeal, has been affirmed after all appeals therefrom have been exhausted.
4. Upon Court Approval, the funds paid by the Settling Defendants under the Settlement Agreement (the "Settlement Funds") will become part of the liquidation estate to be distributed or used by the Liquidator as appropriate. If Court Approval does not occur, the Liquidator shall return the Settlement Funds, excluding any accrued interest on

² Capitalized terms used in this Order and not otherwise defined herein are intended to have the same meaning as ascribed to them in the Settlement Agreement.

the escrowed funds, to lead counsel to the Settling Defendants, without setoff or deduction on account of any claim that the Liquidator or any third party may otherwise have against any of the Settling Defendants in (or in connection with) the Liquidation Proceeding. Based upon the statements made on the record by Defendants' Lead Counsel and by counsel for the Non-Paying Settling Defendant at the hearing on the Motion, the \$55,000 shortfall in the payment of the Settlement Funds as of the date of the hearing on the Motion is attributable to the failure of the Non-Paying Settling Defendant to pay his portion of the Settlement Funds to the Liquidator.

5. Upon Court Approval, the Liquidator, together with his employees and agents, and the Settling Defendants, together with their respective heirs, executors, personal representatives, estates, administrators, insurance carriers, reinsurers and legal representatives, shall release each other from all claims which arise out of or relate in any way to Noble Trust, the Liquidation Proceeding, the Banking Department's examination of Noble Trust and subsequent actions to conserve, liquidate and disseminate the assets of Noble Trust and Aegean Scotia, the Actions, the allegations and defenses in the Actions, or any transactions by, with, including or concerning Noble Trust or Aegean Scotia. However, notwithstanding the foregoing or anything else in this Order or the Settlement Agreement, the Liquidator Releasers' release of the Director and Officer Releasees is conditioned upon the Liquidator's receipt of the entirety of the Settlement Funds.

6. Upon Court Approval, both the Liquidator, together with his employees and agents, and the Settling Defendants, together with their respective heirs, executors, personal representatives, estates, administrators, insurance carriers, reinsurers and legal representatives, shall be released from any and all claims by third parties that arise out of

or relate in any way to Noble Trust, the Liquidation Proceeding, the Banking Department's examination of Noble Trust and subsequent actions to conserve, liquidate and disseminate the assets of Noble Trust and Aegean Scotia, the Actions, the allegations and defenses in the Actions, or any transactions by, with, including or concerning Noble Trust or Aegean Scotia.

7. The Settling Defendants jointly and severally (i) waive and release any right to receive distributions in the Liquidation Proceeding with respect to any and all claims and proofs of claims they have filed or could have filed in the Liquidation Proceeding; and (ii) irrevocably assign to the Liquidator, without recourse, any and all claims and proofs of claims that they have filed or could have filed in the Liquidation Proceeding, including any and all rights to receive distributions in respect of such claims.

8. As set forth in the Settlement Agreement, the Liquidator and the Settling Defendants agree to fully cooperate with each other to give full force and effect to the terms and intent of the Settlement Agreement, including, but not limited to completing, executing, and delivering any and all documentation reasonably required to effectuate any and all aspects of the settlement that is the subject of the Settlement Agreement.

9. This Order shall become effective and *absolute* (the "Effective Date") ,unless otherwise ordered by this court upon motion of any Paying Settling Defendant filed before March 13 2013, upon the earlier of:

(i) February 27, 2013 at 4:00 p.m., provided that each of the Settling Defendants other than the Non-Paying Settling Defendant (collectively the "Paying Settling Defendants") notifies the Court in writing, through their own individual counsel or a designated lead counsel, acting on behalf of the Paying Settling Defendants,

before February 27, 2013 at 4:00 p.m. that they each agree that this Order shall become effective on February 27, 2013 at 4:00 p.m. (the "Effective Date Notice") or

(ii) March 13, 2013 at 4:00 p.m.

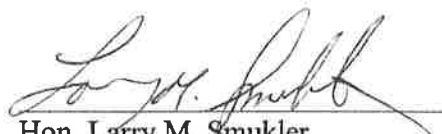
If the Effective Date Notice is given timely and by all Paying Settling Defendants, then (i) each of the Paying Settling Defendants is and shall be jointly and severally liable for any deficiency in the payment of amounts due under the Settlement Agreement and (ii) the Liquidator may only seek to collect any deficiency in the payment of the amounts due under the Settlement Agreement from the Paying Settling Defendants or any one of them after the Liquidator has sought to execute upon a judgment against the Non-Paying Settling Defendant and applied the proceeds of such execution to the amounts due under the Settlement Agreement (iii) the Liquidator shall not commence any action to collect the unpaid amounts due under the Settlement Agreement until March 14, 2013. In the event that a bankruptcy proceeding is commenced by or against the Non-Paying Settling Defendant other than by the Liquidator, which bankruptcy, if commenced by a party other than the Non-Paying Settling Defendant, is not dismissed within 60 days thereof, the Liquidator's collection efforts as to that non-paying Settling Defendant is satisfied and he may proceed against all other Settling Defendants. If the Effective Date Notice is not given timely by all Paying Settling Defendants as set forth above, then the Paying Settling Defendants shall retain any all arguments they may have to avoid liability for the unpaid Settlement Funds and the Liquidator shall retain any and all arguments he

may have that the Paying Settling Defendants are jointly and severally liable for the shortfall in the Settlement Funds.

10. The Liquidator shall file a Notice of Effective Date upon the occurrence of the Effective Date and serve such notice on parties that have filed an appearance in the Liquidation Proceeding and the Actions.

So Ordered.

Dated: February 26 __, 2013



Hon. Larry M. Smukler